

**Syllabus for LS 140  
Property and Liberty  
Fall 2014**

Professor Ben Brown

Reading assignments are from *Perspectives on Property Law* (PPL) or my internet site:  
<http://legalconstitutionalhistory.sharepoint.com/>

Some assignments require logging onto other internet sites.

**Thursday, August 28 – How Property Structures Personhood**

Readings:

**PPL** – 1-5, Erving Goffman, “*Asylums: Essays on the Social Situation of Mental Patients and Other Inmates.*”  
6-15, Margaret Jane Radin, “*Property and Personhood.*”  
259-272, Carol Rose, “*Crystals and Mud in Property Law.*”

Class 1 – Introduction to the course, explain the written/oral assignment. The Importance of Property; Property and Personhood; Effective Property Regimes.

**Week of September 1 – Origins of Property**

Readings:

**PPL** – 83-90, Papanek, “*To Each Less than She Needs*”  
36-41, John Locke, “**Two Treatises of Government**”  
29-35, William Blackstone, “**Commentaries on the laws of England.**”  
**Website** – Locke, expanded reading  
**Internet** – [www.pemberley.com/janeinfo/pridprej.html](http://www.pemberley.com/janeinfo/pridprej.html)

Read *Pride and Prejudice* Vol. 1, chap. 13 – Arrival of Mr. Collins and follow the hyperlink **entailed away from your own children** and read about entail; chap. 19 – Where Elizabeth rejects Mr. Collins’s proposal; chap. 22 – Charlotte Lucas accepts Mr. Collins’s proposal and follow the hyperlink **honourable provision for well-educated young women of small fortune** for a discussion of why Miss Lucas accepted the proposal.

Class 2 – Feminism and Property in *Pride and Prejudice*

Class 3 – Locke and the labor theory of property; Blackstone and the Common Law of Property.

## **Week of September 8 – Property and Inequality**

Readings:

**PPL** – 42-51, Hume, **A Treatise on Human Nature.**

16-28, Carol M. Rose, “*Property As Storytelling: Perspectives from Game Theory, Narrative Theory, Feminist Theory.*”

**Website** – Rousseau

**Internet** – Property in Eve Online:

<http://www.polygon.com/features/2014/2/24/5419788/eve-online-thrilling-boring>

Class 4 – Hume and Rose on who owns Property in an MMO-RPG?

Class 5 – Rousseau’s critiques of individual property rights – Establishing the ongoing dispute.

## **Week of September 15 – Property and Capitalism**

Readings:

**PPL** – none

**Website** – Karl Marx, “*Communist Manifesto*;” John Stuart Mill, excerpt from **Principles of Political Economy**; Henry George, excerpt from “*Progress and Poverty*,” “*Ode to Liberty*”

Class 6 – Property and Markets – Smith and the Classical Economics, Karl Marx rejects Property.

Class 7 – 19<sup>th</sup> Century Critiques of Markets – John Stuart Mill and Henry George

## **Week of September 22 – Colonialism**

Readings:

**PPL** – 180-189, Carol M. Rose, “*Possession As the Origin of Property.*”

321-335, Stuart Banner, “*Two Properties, One Land: Law and Space in 19th-Century New Zealand.*”

**Website** – Paul Finkelman, “*Batter Up*;” ***Johnson v. McIntosh.***

Class 8 – Possession as the basis of property. Colonialism and Real Property in New Zealand.

Class 9 – How the Indians lost their land – European versus Native property systems.

## Week of September 29 – Slavery and Property

Readings:

**PPL** – none

**Website** – John Belton O'Neill “Negro Law of South Carolina” chapter 2 pp. 17 -28  
found at: <https://archive.org/details/negrolawofsouthc00onea>  
*Somerset v. Stewart; Bryan v. Walton; State v. Mann; State v. Boyce.*

Class 10 – American Law of Slavery.

Class 11 – **Group 1** – Valerie Martin, **Property**.

## Week of October 6 – The Critique of Property in the United States

Readings:

**PPL** – 52-63, Milton Friedman, **Capitalism and Freedom**  
243-250, Penalver and Katyal, *Property Outlaws*

**Website** – Thorstein Veblen, **Theory of the Leisure Class**  
Carol Rose, “*Property Law and the Rise, Life, and Demise of Racially Restrictive Covenants;*” *Bell v. Maryland.*

Class 12 – Race and inequality in the 20<sup>th</sup> Century

Class 13 – Thorstein Veblen and the anthropological analysis of property. Milton Friedman and Property and Freedom in the 20<sup>th</sup> Century.

## Week of October 13 – Income Equality in the 20<sup>th</sup> Century

Readings:

**PPL** – 83-90, John Rawls, “**A Theory of Justice**”

**Website** – Mark Roe, “*Backlash*”

**Internet** – John Cassidy review of Thomas Piketty Capital in the Twenty-first Century:  
<http://www.newyorker.com/magazine/2014/03/31/forces-of-divergence?printable=true&currentPage=all#ixzz2wuzLPF2d>

Class 14 – Economic Inequality in the 20<sup>th</sup> Century – Roe, Rawls and Piketty

**Class 15 – Midterm on October 16**

**Week of October 20** – The Tragedy of the Commons –  
Do communal use systems always lead to inefficiencies?

Readings:

**PPL** – 99-106, Garret Hardin, “*The Tragedy of the Commons.*”  
112-120, Demsetz, “*Toward a Theory of Property Rights.*”  
139-148, Smith, “*Semi-Common Property Rights and Scattering in the Open Fields.*”  
107-112, James M. Acheson, “*The Lobster Gangs of Maine.*”  
131-139, Michael A. Heller and Rebecca S. Eisenberg, “*Can Patents Deter Innovation? The Anticommons in Biomedical Research.*”  
419-428, Robert P. Merges, “*Property Rights Theory and the Commons: the Case of Scientific Research.*”  
225-234, Robert Axelrod, “*The Evolution of Cooperation.*”  
**Internet** – Elinor Ostrom youtube clip: [www.youtube.com/watch?v=ByXM47Ri1Kc](http://www.youtube.com/watch?v=ByXM47Ri1Kc)

Class 16 –The Tragedy of the Commons; The Tragedy of the Commons Critiqued

Class 17 – Science, the Commons and Patent Trolls

**Week of October 27** –Law and Economics Analysis and Property; Are Markets Rational?

Readings:

**PPL** – 173-80, Ronald H. Coase, “*The Problem of Social Cost.*”  
322-328, Richard A. Posner, “**Economic Analysis of Law**”  
181-90, Robert C. Ellickson, “**Order without Law: How Neighbors Settle Disputes.**”  
**Internet** – Dan Ariely Ted Talk:  
[http://www.ted.com/talks/dan\\_ariely\\_asks\\_are\\_we\\_in\\_control\\_of\\_our\\_own\\_decisions.html](http://www.ted.com/talks/dan_ariely_asks_are_we_in_control_of_our_own_decisions.html)  
Dan Pink: [http://www.ted.com/talks/dan\\_pink\\_on\\_motivation.html](http://www.ted.com/talks/dan_pink_on_motivation.html)

Class 18 – Ronald Coase and Efficiency Analysis. Critiques of Coase Theorem.

Class 19 – **Group 2** – Dan Ariely, Predictably Irrational.

**Week of November 3** – The Internet and Public Goods –  
Should the Internet be a commons?

Readings:

Class 20 – An Introduction to Public Goods; Patents, Copyright and Intellectual Property.

Class 21 – **Group 3** – Lawrence Lessig, **Remix**

**Week of November 10** – Government Regulation and Property Rights

Readings:

**PPL** – 410-418, Joseph L. Sax, “*The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention.*”

**Website** – **Pennsylvania Coal Co. v. Mahon, Just v. Marinette County.**

Class 22 – How severely can the government regulate the use of property before it must pay compensation to the owner? Government Regulation and the Environment.

Class 23 – **Group 4** – Environmental Conflict – Book – **A Good Forest for Dying**

**Week of November 17** – Environmentalism and Eminent Domain

Readings:

**Website** – **Kelo v. New London, Conn.**; Charles Reich, excerpt from “*The New Property*;” **Goldberg v. Kelly.**

Class 24 – Eminent domain and local control of environmental measures. Oregon Prop 37 and Prop 49, Post-Kelo propositions.

Class 25 – **Group 5** – Should Property Rules apply to Government benefits? – Charles Reich, “*The New Property.*”

**Week of November 24** – Homelessness

Readings:

**Internet** – Denver’s Road Home program: [www.denversroadhome.org](http://www.denversroadhome.org)

Class 26 – Homelessness and Community

**Thursday, November 27 – Happy Thanksgiving**

**Week of December 1 – Organizing the Internet and Internet Piracy**

Readings:

**Internet** – <http://www.authorama.com/free-culture-1.html>

Lawrence Lessig, Free Culture, Read chapter 5 on piracy and property

Class 27 – Organizing the Internet – Cooperation versus Competition. Is Internet Piracy a social good or a social evil?

Class 28 – Net Neutrality; Review for Final

**Final – Friday, December 20 – 7:00 – 10:00 p.m.**